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Held at the Palais des Nations, Geneva,
on Thursday, 19 October 1995, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

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GE.95-19112 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

FOURTH PERIODIC REPORT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: SUPPLEMENTARY REPORT ON THE DEPENDENT TERRITORIES: HONG KONG (continued) (CCPR/C/95/Add.5; M/CCPR/C/55/LST/HKG/3)

1. The CHAIRMAN invited members of the Committee to address additional questions to the delegation of the United Kingdom in connection with section I of the list of issues (M/CCPR/C/55/LST/HKG/3).

2. Mr. PRADO VALLEJO expressed great satisfaction at the efforts being made by the United Kingdom, together with the Government of China, to ensure that the Covenant continued to remain in force in Hong Kong after July 1997. It was to be hoped that the United Kingdom would do everything in its power to prevent the Covenant becoming a dead letter after the territory reverted to the People's Republic of China.

3. Noting that the Hong Kong population had at no time been consulted directly about its future, he remarked that the situation today might be very different if a self-determination exercise had been conducted in accordance with article 1 of the Covenant. Now that so little time was left before the transfer of power, holding such a consultation would not, of course, be practicable. That was a matter for regret.

4. Rights under the Covenant were rights of the inhabitants of Hong Kong, not those of States or other political entities. Human rights covenants were in a different category from other treaties in that, having once entered into force, they could not be extinguished unilaterally by a new Administration. The International Covenant on Civil and Political Rights did not contain a denunciation clause and could not cease to exist under any circumstances. He wished to emphasize that point not only in order to encourage the United Kingdom to make every effort to implement human rights until 1 July 1997, but also so that the other party might clearly understand the international community's views on the matter.

5. Human rights problems were not domestic issues; they were of concern to the international community at large. The Chinese Government's position that laws in force in Hong Kong would be abolished if they were incompatible with the Chinese Constitution was therefore disquieting, as was China's declaration that it did not consider itself bound by the obligation to report to the Committee under article 40 of the Covenant. Noting that no specific agreement had been reached between the United Kingdom and China on the latter problem, he wondered whether the United Kingdom could not, by effective diplomacy and dialogue, endeavour to convince the other party of the need to report to the Committee at least on the territory of Hong Kong.

6. The Hong Kong Government's decision not to establish a human rights commission, reported in paragraph 10 of the report (CCPR/C/95/Add.5), and, instead, to expand its human rights education programmes was somewhat

disturbing. Such programmes, important as they were, could not be expected to produce immediate results. A clarification of the reasons for the failure to institute a human rights commission would be welcome.

7. Another point that needed elucidation was the legal status of the Covenant in Chinese legislation. Would the Covenant take precedence over local laws or would it, on the contrary, be secondary to them? The Joint Declaration said nothing on that important point. Could the United Kingdom take any action to prevent the Covenant being rendered ineffective by the enactment of new Chinese legislation? The question of effective remedies and appropriate mechanisms available to the population of Hong Kong to ensure that the enjoyment of rights under the Covenant did not remain a dead letter also required clarification.

8. Article 23 of the Basic Law referred to political organizations or bodies of the region being prohibited from establishing ties with foreign political organizations or bodies. The provision was disturbing, since its implementation would seriously interfere with the activities of Hong Kong's non-governmental organizations.

9. In conclusion, he wondered whether there was any possibility of the United Kingdom withdrawing its reservations on the Covenant, if only with regard to the territory of Hong Kong, and expressed strong regret at the United Kingdom's failure to accede to the Optional Protocol, as a result of which the people of Hong Kong were deprived of the possibility of addressing themselves directly to the Committee in the event of human rights violations.

10. Mr. KRETZMER associated himself with most of the comments and concerns of previous speakers in connection with the continued implementation of the Covenant in Hong Kong. He wished to address a point which had not been touched upon previously, namely, the position of especially vulnerable groups of persons employed by the present authorities in activities regarded as unfriendly by China, such as, for example, employees of the Special Branch. What was the United Kingdom Government's policy with regard to such persons or groups, whose human rights might well come under threat after the transfer of sovereignty?

11. The question of judicial review of legislation required clarification. It was not clear whether courts in Hong Kong had power of judicial review with regard to laws passed after the Bill of Rights Ordinance (BORO) on the grounds of inconsistency with the Letters Patent. Problems in that connection could arise when the Letters Patent lost their validity after 1 July 1997. Reliance would then have to be placed on article 39 of the Basic Law, but it was not clear whether the provisions of that article would allow for proper judicial review. Under article 158 of the Basic Law, the power of interpretation of that Law would be vested in the Standing Committee of the National People's Congress; it was not clear what would happen in the event of a conflict of views between the courts, on the one hand, and the Standing Committee of the National People's Congress, on the other.

12. Another issue of concern was the future implementation of the Covenant should the Basic Law and in particular its article 39, be amended at some time in the future. Could some way be found of giving the Covenant an independent status before July 1997?

13. Turning to the question of discrimination on grounds of sex, he associated himself with the questions already asked by Ms. Medina Quiroga and, referring to paragraph 354 of the report, asked why the Hong Kong Government seemed reluctant to implement all the Covenant's provisions in that respect. Had any timetable been drawn up for introducing all relevant legislation during the remaining 600 days of United Kingdom sovereignty?

14. A specific issue relating to the status of women was that of instructions to juries by judges in cases of rape. It would be useful to know when the Hong Kong Government intended to introduce legislation abolishing the requirement of corroboration in all such cases. Noting that marital rape was not at present a crime in the territory, he asked whether there was any intention to introduce legislation, as in most other jurisdictions, making rape a crime even within marriage. Lastly, he noted that there appeared to be some reluctance on the part of the authorities to investigate cases of domestic violence, and asked for a clarification of policy in that respect.

15. Mr. LALLAH welcomed the various juridical steps being taken by the United Kingdom, by agreement with the new sovereign Power, to ensure that the Covenant remained in force in Hong Kong after July 1997, and particularly appreciated Mr. Steel's forthright statement that article 40 of the Covenant must continue to live. He was, however, a little uncertain as to what practical steps were being taken to familiarize the Chinese Government with its obligations and the best way of performing them. In that connection, it might have been useful to invite the Chinese Government to delegate an observer to attend the present session during the consideration of the report on Hong Kong.

16. So far as obligations under article 40 were concerned, the Government of China had two options. It could either submit the reports on Hong Kong itself or it could authorize the Government of the Hong Kong Special Administrative Region to do so by virtue of a combination of articles 62 (3) and 151 of the Basic Law. He wondered whether the present Hong Kong Government had any views on the matter. While there was no reason to believe that China had any intention of failing to comply with the principle of pacta sunt servanda, had any thought been given as to how the United Kingdom could enforce the principle if a breach did occur?

17. The other point he wished to raise was that of the entrenchment of certain rights, in the sense that the provisions relating to those rights could not be amended except by a weighted majority. Referring in that connection to the provisions contained in the second paragraph of article 159 of the Basic Law, he remarked that, unfortunately, the interpretation given to the question of the availability of rights under the Covenant to the citizens of Hong Kong in their relations to each other was even now somewhat regressive. It was difficult to understand why section 7 of the BORO should apply only to the Government and all public authorities but not to the people of Hong Kong. Why, for example, was the prohibition of violation of the right

to life applicable only to government officials? On the face of it, Hong Kong had a better system than the United Kingdom itself because, unlike the United Kingdom, it had a bill of rights as well as the common law. However, the Bill of Rights in Hong Kong was subject to severe restrictions, and that was what made the question of entrenchment particularly important.

18. Mr. POCAR said that the United Kingdom Government's interpretation of international law with regard to human rights treaties, as explained by Mr. Steel at the previous meeting, was fully consistent with the Committee's views and practice. It was thus common ground that the essential parts of the Covenant, including the reporting procedure under article 40, could not be derogated from under any circumstances. That being so, it was clear that the United Kingdom had a responsibility for handing over the territory of Hong Kong to China under conditions that would prevent any erosion of existing human rights standards. He would not go so far as to say that the United Kingdom had to continue to assume responsibility for the protection of human rights after the transfer of power - such a stipulation would be impossible to fulfil - but he was certain that it did have an obligation to ensure the continuity of human rights protection in the territory.

19. On the occasion of the consideration of an earlier periodic report on Hong Kong, he had been disturbed by the view expressed by the United Kingdom delegation to the effect that the United Kingdom Government was not in a position to give an authoritative interpretation of the Basic Law, which had been drawn up by China. In his view, while the United Kingdom could not be expected to take responsibility so far as the Basic Law itself was concerned, it did have a responsibility for the implementation of the Joint Declaration and should make sure that the Joint Declaration was interpreted in the same way by both parties. In that connection, he would welcome more information on the arrangements made with regard to future reporting under article 40 of the Covenant.

20. The second point he wished to raise related to press reports suggesting that the position taken by the Preliminary Working Committee was liable to lead to a substantive erosion of the Bill of Rights Ordinance, including the repeal of certain rights. What was the United Kingdom doing to ensure that such a situation did not arise?

21. Mr. BRUNI CELLI said there was no doubt that the Committee's main concern was the future implementation of the basic provisions of the Covenant after 30 June 1997. That concern was not simply of academic importance but also of importance for the applicability of the Covenant, for the rights already enjoyed by the people of Hong Kong and for future reports which were to be presented to the Committee. According to article 39 of the Basic Law, the rights already acquired by the people of Hong Kong would be respected. Restrictions by future law could create a particularly delicate problem for international law on human rights. On the specific question of applicability, article 5, paragraphs 1 and 2, of the Covenant imposed the requirement of non-derogability of established fundamental human rights. There were no provisions for denunciation in the Covenant. International human rights law was binding, and although it was created by States, States could not withdraw from their obligations. Treaties contained stipulations formulated in favour of the citizens of States, and the fulfilment of obligations under those

treaties was not left solely to the will of States. They could not therefore be repealed unilaterally. States which ratified a human rights agreement assumed certain obligations towards the persons under their jurisdiction.

22. The Basic Law was a Chinese law. Under article 39 of that Law, the Committee would in the future have to seek information from the Government of China. The Joint Declaration had been described as an international treaty, and in those circumstances the principle of pacta sunt servanda must be observed and the obligations established by article 26 of the Vienna Convention on the Law of Treaties fulfilled. He therefore wished to draw the attention of the Committee to paragraph 156 of the Joint Declaration. What interpretation was to be given to the stipulation that "the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force"? It should be noted that the paragraph referred first to the International Covenant on Civil and Political Rights, and second to the International Covenant on Economic, Social and Cultural Rights, the reverse of the order in the International Bill of Human Rights. He wondered what that reversal meant, and whether the provisions, as applied to Hong Kong, pertained to the two Covenants or only to the second, the International Covenant on Economic, Social and Cultural Rights. That distinction was important because while article 2 of the International Covenant on Civil and Political Rights called for its implementation without distinction of any kind, article 2 of the International Covenant on Economic, Social and Cultural Rights allowed certain conditions: States parties made a commitment to take steps, to the maximum of their available resources, with a view to achieving the progressive realization of the rights recognized in that Covenant. It was therefore not an absolute obligation.

23. Mr. BUERGENTHAL said he was pleased by the United Kingdom Government's categorical and unequivocal statement that the Joint Declaration made the International Covenant on Civil and Political Rights as a whole applicable in Hong Kong after 1997. There was no doubt that the State party's interpretation of the Joint Declaration was sound under international law and entirely consistent with United Kingdom's obligations under the Covenant and towards the people of Hong Kong. He was particularly impressed by the emphasis Mr. Steel had put on the Joint Declaration's status as an international treaty, registered with the United Nations under Article 102 of the Charter. He wondered whether he was correct in assuming that the delegation's emphasis in that regard indicated that the United Kingdom wished to stress that among the remedies available to it if the Covenant was not complied with in future, was the right to put the matter before the United Nations or other international bodies, unencumbered by the prohibition of interference in a country's domestic affairs. The prevailing thinking in international law was that international treaties were not needed to deal with matters of human rights at the international level, but some countries took a contrary view. That was why he considered the United Kingdom's emphasis noteworthy.

24. The effect of the Joint Declaration was that the manner in which human rights were observed in Hong Kong was a matter of international concern and not a subject of domestic jurisdiction. He therefore wondered whether that was the message which the State party had wished to convey to the Committee.

25. He also inquired whether the activities of the Joint Liaison Group would end in the year 2000 and, if so, what other dispute-resolution mechanisms were envisaged after that year.

26. He wished to mention that, in the event of non-compliance with the Covenant, the Government of the United Kingdom could approach the United Nations. He assumed that the Government could inform the Human Rights Committee when the Committee prepared its annual report.

27. He had a particular interest in compliance with the reporting procedures of the Covenant. He asked whether the Government of the United Kingdom had indications on how that matter was to be dealt with and whether the United Kingdom had made proposals on that subject. Those were practical issues which, admittedly, were not easily resolved.

28. Another point of interest related to the notification requirement in cases of emergency under article 4, paragraph 3, of the Covenant. Since the requirement to notify the Human Rights Committee when an emergency arose was an essential part of the procedures established in the Covenant, and no mention had been made of the requirement in the State party's presentation, he wondered whether that issue had been considered by the United Kingdom Government.

29. On the subject of a human rights commission, he was unconvinced by the reasons given for its non-establishment. Such a body would carry out the same functions as the Human Rights Unit, but one important distinction was that the human rights commission would be independent. The very existence of a commission would serve as a symbolic expression of support for the important role that human rights played in Hong Kong. The objections which had been mentioned were the same as those that had prevented other countries from establishing an independent commission. He wondered what the real objections were.

30. He wished to associate himself with the observations made by Mr. Bhagwati and Ms. Evatt about the apparently discriminatory system of elections in Hong Kong. Only 20 of the 60 government representatives were elected by universal suffrage. The remaining 40 were elected on the basis of functions and, in effect, a large sector of the population was disenfranchised. He wondered whether the people of Hong Kong could be expected to have confidence in the protection of their human rights if large segments of the population played no role in the law-making process.

31. Mr. BAN agreed with his colleagues on all the issues they had raised, but found it unnecessary to stress the jurisprudence of the Committee. The Joint Declaration by China and Hong Kong had been a clear-cut decision between two countries in an internationally binding document. The United Kingdom Government was to be commended for its approach in entering into that agreement.

32. One issue which gave rise to concern was the wording of the Basic Law. That Law was a product of national legislation and, under international law, it was uncontested that international treaties prevailed over internal law. The fear had been expressed that China did not intend to respect the Joint

Declaration and information had been passed on to the Committee in that regard. It was clear that the Committee's discussion involved Hong Kong, a State party to the International Covenant on Civil and Political Rights, and not a future State party. China was not present before the Committee so it would have been unfair to elaborate on that issue. He welcomed the comments of the United Kingdom delegation on that subject. He believed that the United Kingdom Government had done everything possible to ensure the future implementation of the Covenant by China.

33. From a legal standpoint, there was no doubt that article 40 was applicable. Mr. Pocar had raised the interesting issue of the optionality and non-optionality of the Protocol. The Covenant was in fact an indivisible entity and States could neither opt in nor opt out. Article 41 was not relevant to the discussion. From a practical standpoint, however, he believed that more decisiveness could have been expected from Hong Kong beyond the drafting, signing and ratification of the Joint Declaration because the United Kingdom was a State party bound by the reporting obligations and would be transferring a treaty obligation to another State party. Normal diligence required that a successor to reporting obligations should be designated or that an effort be made to identify the body responsible for compliance with the reporting obligations vis-à-vis the Committee.

34. While he congratulated the Government of the United Kingdom and the Hong Kong authorities on the commendable and extensive legislative work they had carried out, he was somewhat perplexed to read in the report that a number of bills had been tabled and were awaiting examination by the Parliament. He wished to know what the applicable law would be on 1 July 1997. It would be helpful if the State party appeared before the Committee a few months before the transfer of sovereignty to submit a report on what had transpired since the consideration of the fourth periodic report. The Committee should bear in mind that it hoped to receive a fifth periodic report and that when it considered that report, reference would be made to the status of legislation before the transfer of power to China. He therefore thought it would be useful to receive an update on enacted legislation in the first half of 1997.

35. Mr. FRANCIS agreed that the uncertainty surrounding events after July 1997 was a major source of concern. It was heartening to observe that the first part of the Joint Declaration contained provisions to guarantee the continuation of the capitalist system and the prevailing lifestyle in Hong Kong for 50 years. Since becoming a member of the Committee, he had been assured that the provisions of the Covenant were the minimum standards acceptable in the general context of multilateral diplomacy. Thanks to the number of ratifications of the Covenant, its provisions had been crystallized into customary international law and were therefore binding on State parties.

36. The experience of Yugoslavia and the demise of the Soviet Union had taught that rights acquired by people were inalienable. That was his starting point with regard to article 40 of the Covenant. He commended the Government of the United Kingdom for the clever formulation of the Joint Declaration and pointed out that there were at least three clear procedures under article 11 of the Joint Declaration: the successor State could report directly; Hong Kong, China, could report directly, subject to one condition; and Hong Kong could report through the successor State. Even though China was

not a State party to the Covenant, article 11 of the Joint Declaration made clear-cut provisions for reporting. There was therefore no doubt that article 40 was applicable.

37. There were two remaining issues of grave importance, namely, the establishment of a human rights commission and the question of unequal suffrage. He shared Mr. Buergenthal's view that the explanation in paragraph 10 of the report was not satisfactory. Hong Kong had a strong network of NGOs and a highly organized system of education in human rights. As the whole population became increasingly aware of their rights, the greater their recourse would be to the established institutions for enforcement of those rights and the swift dispensation of justice. The court system involved a long and expensive process and therefore could not handle all such matters. Several countries had used their human rights commissions to great advantage and he was sure that Hong Kong would benefit from such an institution. He urged the United Kingdom Government to reconsider its stand on that matter.

38. With regard to unequal suffrage, the United Kingdom Government could not allow the situation to remain as it was. When policy matters were to be discussed, the Government could solicit the views of the various interest groups, but dispossessing people of their rights and investing them in others was not the correct solution. Article 25 of the Covenant expressed the idea of "one man, one vote". It should be clear that the Government of the United Kingdom had a sacred obligation to rectify the situation of unequal suffrage before 1997. He would welcome comment by the United Kingdom delegation on that issue.

39. Hong Kong had done all it could in the Joint Declaration, as far as article 40 of the Covenant was concerned. Discussions should continue behind the scenes to achieve a clear understanding in order to ensure a smooth transition of responsibility of the State party with regard to article 40 of the Covenant.

40. The CHAIRMAN invited the United Kingdom delegation to reply to the questions put by members of the Committee.

41. Mr. STEEL (United Kingdom) said that he would reply to those questions which concerned the responsibility of the United Kingdom Government, while Mr. Fung would respond to those which concerned the laws and practices of Hong Kong.

42. It had been asked what measures the United Kingdom was taking to ensure, after the hand-over of July 1997, the implementation of the provisions of the Covenant in Hong Kong, and in particular the continued submission of reports to the Committee. Mr. Bruni Celli had inquired whether the phrase "as applied to Hong Kong" in article 39 of the Basic Law referred to both the Covenant and the International Covenant on Economic, Social and Cultural Rights. He assured the Committee that their order in that sentence implied no preference; the phrase applied equally to both instruments.

43. In its discussions with the Chinese Government, the United Kingdom had clearly set forth its view of the obligations of that State vis-à-vis the Covenant. No agreement on a procedure for the continued transmission of

reports had as yet been reached. He could not speak for another sovereign State, and therefore could not relay to the Committee the views expressed by China in the course of those talks. The United Kingdom had set before China its view of the possible ways in which that Government might discharge its obligations under article 40 of the Covenant in the matter of Hong Kong. China could either accede to the Covenant in respect of the whole of its territory or in respect of Hong Kong alone. As it had informed the Chinese Government, the United Kingdom would welcome that country's accession to the Covenant, but the decision was naturally China's. His Government could not press the Chinese Government on that point. If the Chinese Government preferred that Hong Kong should report directly to the Committee, that approach would also be welcome. In any event, his Government would pursue vigorously its talks with the Chinese Government and remained hopeful about the results.

44. Members of the Committee had inquired what measures the United Kingdom was taking to ensure that the Covenant would be implemented in Hong Kong after July 1997. He could only refer the Committee once again to the legislative agreements into which the United Kingdom had entered with China in the matter of Hong Kong, as well as to the machinery set up in Hong Kong to facilitate the working of those agreements. The Committee should rest assured that the United Kingdom would continue to impress its views on the Chinese Government.

45. Invoking Article 102 of the Charter, Mr. Buergenthal had suggested that China might indeed be obliged under international law to fulfil obligations imposed by the Covenant with respect to Hong Kong. In the view of the United Kingdom Government, it was unnecessary to contemplate such a recourse at the current stage.

46. The Basic Law was Chinese and he was therefore not in a position to provide an authoritative reading of its provisions. He could nevertheless safely assure the Committee that the phrase in question - "shall be implemented through the laws of the Hong Kong Special Administrative Region" - had no sinister implications; it simply indicated that the provisions of the Covenant would be implemented under the terms of that legislative regime.

47. His Government had carefully assessed, in consultation with the Government of Hong Kong, the reservations to the Covenant in force with respect to that territory and had determined that all of them were relevant and necessary. They would not therefore be withdrawn.

48. The recommendations of the Preparatory Working Committee's Legal Sub-group were indeed troubling; his Government had already expressed its serious concern about those proposals to the Joint Liaison Group in Hong Kong and would vigorously reiterate that concern at its meeting later that month. In the view of his Government, the Bill of Rights was entirely consistent with both the Joint Declaration and with the Basic Law; there was no cause for it to be either repealed or amended in the manner suggested.

49. Concern had also been expressed about the amendment or repeal of individual ordinances. It was the responsibility of his Government, under the Joint Declaration, to ensure that the laws of Hong Kong were brought into conformity with the terms of the Covenant and therefore also in line with the

provisions of the Bill of Rights. He wished to stress that no major changes were being made to the laws of Hong Kong, except to the extent specifically required by and compatible with the Joint Declaration and the Basic Law.

50. The arrangements for the 1995 election of the Legislative Council had been open, fair and consistent with the agreements and undertakings reached between the British and Chinese Governments. In the view of his Government, that election had fulfilled the wish of the Hong Kong community for a credible representative institution capable of carrying on after the hand-over of July 1997. If the Chinese Government saw fit to make alternative arrangements, it would be incumbent upon it to explain to the people of Hong Kong and to the international community just how those arrangements would both favour a smooth transition and fulfil that country's obligations under the Joint Declaration.

51. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) would in fact devolve to the Hong Kong Special Administrative Region. The United Kingdom had announced its intention to withdraw many of its reservations to that instrument; when that process was completed, it would hold talks with the Hong Kong Government to determine which of the remaining reservations should apply to that territory. The extension of CEDAW to Hong Kong would impose new international rights and obligations. It would therefore be necessary to consult the Chinese Government after the conclusion of such an agreement; since, however, China was a party to CEDAW, no difficulties were anticipated.

52. The Bill of Rights did not reflect article 24, paragraph 3, of the Covenant because the law concerning nationality currently in effect in Hong Kong was not a Hong Kong law but a British law. But since the right of a child to acquire a nationality was protected under the laws of the United Kingdom, it was fully respected in Hong Kong as well.

53. Mr. FUNG (Hong Kong Government) said that the Government of China did not exert an undue influence on the policies of the Hong Kong Government. The position of the Hong Kong Government was clear: it would not cede policy questions to any other body; it had always formulated and implemented policy in the best interests of the people of Hong Kong, and would continue to do so. Indeed, under the terms of the Joint Declaration and the Basic Law, which provided for a high degree of autonomy for the Hong Kong Special Administrative Region, the territory would continue to enjoy the same autonomy as it had traditionally enjoyed vis-à-vis the United Kingdom.

54. The regulations imposed under the terms of the Emergency Regulations Ordinance had recently been repealed in Hong Kong. As long as no emergency arose, the Government saw no grounds for enacting new emergency provisions. The Emergency Regulations Ordinance nevertheless remained on the statute book; while the capacity to legislate such regulations therefore remained, it could only be exercised in the context of a particular emergency. As established in section 5 of the Bill of Rights Ordinance, which reflected the terms of article 4 of the Optional Protocol, emergency measures could only be taken to the extent strictly required by the exigencies of the situation. Furthermore, any such measures were subject, before 1997, to the constraints of the Letters Patent, and after 1997 to those of article 39 of the Basic Law.

55. Like Mr. Steel, he was not competent to interpret the laws of China, but by his personal reading, the emergency regulations referred to in article 18 of the Basic Law could only be invoked in light of article 39 of that Law. That article in turn mirrored sentence 156 of the Joint Declaration, which stipulated that the terms of the Covenant as applied to Hong Kong would remain in force.

56. The second paragraph of article 39 of the Basic Law furthermore provided that the rights and freedoms enjoyed by the residents of Hong Kong must not be restricted unless as prescribed by law and that such restrictions must not contravene the provisions of the preceding paragraph. Therefore the provisions of the fourth paragraph of article 18 must be read in the light of the limitations on emergency powers imposed by the Covenant.

57. While no plans were under way to establish a human rights commission per se, the functions of such a body would be discharged by other means. The Government had undertaken measures to promote public education and to review all legislation for consistency with the provisions of the Bill of Rights. There existed mechanisms whereby the Government consulted the legislature, political parties, the Law Reform Commission, the advisory bodies, NGOs and members of the public in the formulation of human rights policy, as well as a system for monitoring government malpractice, which involved the participation of the judiciary, the media and NGOs. While the measures outlined might not meet the Committee's expectations, he could only assure its members that their views had been noted with interest and would not be ignored.

58. The Hong Kong Government fully supported the principle of equal opportunity for all. While, however, the Bill of Rights Ordinance prohibited discrimination on grounds of race, colour, sex, language, religious belief or other opinion, national or social origin, property, birth or other status, it bound only governmental and public authorities and therefore did not provide protection against the infringement of rights by other individuals. To fill that legislative gap, the Sex Discrimination Ordinance and the Disability Discrimination Ordinance had been enacted. The Hong Kong Government was adopting a step-by-step approach to achieving a comprehensive anti-discrimination legislative programme.

59. The question had been raised as to why the Hong Kong Government consulted members of the public concerning anti-discrimination legislation, and in particular with regard to legislation concerning discrimination on the basis of gender. Hong Kong's firm belief in government by consultation had its historical roots in the days when the territory had benefited from no elected legislature; it had proved especially important to be sensitive to the needs and views of the community in both the formulation and the implementation of laws. The Government intended to conduct surveys so as to better assess the views of individuals and NGOs.

60. The question of the capacity to reinstate an employee dismissed by his employer on grounds of sex was certainly worthy of consideration. The Legislative Council had debated that issue in its consideration of the Sex Discrimination Bill at its previous session; the bill had, however, passed without the inclusion of that provision. It was hoped that the Equal Opportunities Commission, to be established under the terms of the Sex

Discrimination Ordinance, would review the implementation of the terms of that legislation before determining whether it should be amended in the manner suggested.

61. In response to the question whether the work of the Commissioner for Administrative Complaints was directly related in any way to that of the Administrative Appeals Board, he said it was not. The Commissioner operated independently under a special statute and had full discretion to determine whether to undertake or pursue investigations into maladministration. He reported directly to the Governor, and in cases where he considered that a serious irregularity or injustice had occurred, his report was likewise transmitted to the Legislative Council. The Administrative Appeals Board was part of a separate system whereby administrative decisions could be reviewed from the substantive standpoint by an independent appellate body. Both bodies, it was hoped, would reinforce the system of responsible administration.

62. Concerning village elections and what steps the Government had taken to promote equality in the face of rural traditions that discriminated against women, he said the Government was committed to the dual principles of open and fair elections and one person, one vote. The Heung Yee Kuk was an independent body that advised the Government on New Territories matters and was composed of inhabitants of New Territories. It, too, fully supported the two principles he had just mentioned. By August 1995, through the combined efforts of the Government, the Heung Yee Kuk and the rural committees, 448 of a total 691 villages had used the one-person-one-vote principle to elect their representatives. The remaining villages were expected to hold elections applying the same principle in late 1995 or early 1996.

63. Women's right to participate on equal terms with men in rural elections had been safeguarded by the Sex Discrimination Ordinance enacted in July 1995, section 35 of which provided that it was unlawful to discriminate against any person in rural elections on grounds of his or her sex. In response to the question on steps to educate villagers and change traditional cultural biases, he said an explanatory leaflet outlining the main features of the Sex Discrimination Ordinance had been published; the attention of the Heung Yee Kuk had been drawn to the provisions in the Sex Discrimination Ordinance on rural elections; liaison officers in New Territories had been instructed to explain to villagers the effect of, and need to comply with, the new legislation; and District Boards had stepped up a publicity campaign to promote the principle of one person, one vote. Once the Sex Discrimination Ordinance had come into force, the Government would cease to recognize village representatives elected on any basis other than one person, one vote: that would act as a strong incentive to villagers to fall in line with the new principle.

64. On the question whether functional constituencies were consistent with article 26 of the Covenant, he said the distinction between the two types of elections - by functional and by geographical constituencies - did not offend article 26, since it was based on objective criteria and was reasonable under the circumstances now prevailing in Hong Kong. International jurisprudence had established that special regard could be given to the particular circumstances of a country or territory in implementing conventions.

Representative government was a fairly new phenomenon in Hong Kong, and the establishment of functional constituencies could be justified as a reasonable means of gradually consolidating that system of government. Article 68 of the Basic Law enunciated the objective of gradual and orderly progress towards the ultimate aim of universal suffrage, and annex II indicated that the legislature would be formed using functional constituencies as an interim measure.

65. Ms. Evatt had asked about the two-week rule to which foreign domestic helpers were subject for their residence in Hong Kong after termination of contract. The purpose of that rule was to deter foreign domestic helpers from unauthorized employment or residence. It was not unique to such workers but applied generally to workers admitted to Hong Kong under the importation of labour scheme. The strictness of the rule was ameliorated by the fact that the Immigration Service was authorized to apply it with flexibility, taking into account genuine grievances such as financial difficulties or employer abuse. In cases of abuse, foreign domestic helpers were permitted to change employment without having to return to their home country.

66. On the question about the revocation of voting rights for certain categories of criminal offenders, the Government's view was that such electoral disqualifications were reasonable restrictions of the right to vote or to be elected, and as such, were permissible under article 25 of the Covenant. The Government did not contend that such provisions were indicative of liberal electoral legislation, but it did maintain that they were not unique worldwide.

67. Turning to the question as to why inter-citizen rights had been excluded from the application of the Bill of Rights, he said the clear and honest answer was that the decision had been motivated by concerns expressed by the community, particularly the banking, finance and business sectors, which had felt that to do otherwise would be to generate legal uncertainty. The private sector had sought high-level legal advice in support of its proposal that citizen-to-citizen disputes should not be covered by the Bill of Rights. After lengthy consultations, the Government had adopted the view that conduct among individuals would be more appropriately dealt with by detailed legislation rather than by broad provisions. A policy decision had therefore been taken that the object of the Bill of Rights would be to protect the individual from violation of his or her rights by the Government and public authorities. Now that the Bill of Rights had been passed, the Government was studying the possibility of introducing detailed legislation on privacy protection and discrimination and had recently introduced legislation on data protection and on prohibition of discrimination on grounds of sex, marital status, pregnancy or disability.

68. On the correlation between article 9 of the Bill of Rights and section 12 of the Bill of Rights Ordinance, he said that article 9, which was based on article 13 of the Covenant, conferred on a person who had lost the right of abode in Hong Kong the right to the protection of the law and to advance reasons why he or she should not be expelled. It also entitled such an individual to review of his or her case, and to representation for that

purpose, before a competent authority. Section 12 of the Bill of Rights Ordinance removed that right of review but not the stipulation that a decision must be reached in accordance with the law and due process observed in respect of the decision.

69. As to the case raised by Mr. Mavrommatis illustrating the attitude of the judiciary - its apparently less-than-liberal approach to interpretation of the Bill of Rights, he said that in almost every instance of possible infringement of the Bill of Rights, the courts had to weigh the interest of society in maintaining rights and freedoms against its competing interest in preserving law and order. In the case cited, it had been necessary to strike a balance between free expression and effective law enforcement in the form of combating corruption. The Government had given priority to combating corruption, which was considered to be a pressing social problem. Accordingly, the Court of Appeal had determined that the investigation must remain confidential, in order to protect the integrity of the process and to preserve the rights and reputations of the persons involved. That decision had been appealed to the Privy Council, which was expected to resolve the matter in November 1995.

70. Turning to the important questions on interpretation of the Basic Law, the role of the Standing Committee of the National People's Congress and the extent to which human rights would be protected in future, he said the Basic Law was a law of the People's Republic of China, passed by the National People's Congress under Chinese jurisprudential principles. The executive branch, in the course of its acts, and the judiciary, in deciding particular cases, could interpret the Law, though it was only the National People's Congress that had authority to make broader, more authoritative interpretations with universal applicability. That principle, which informed the wording of article 158 of the Basic Law, came into play only in matters involving the responsibility of the Central People's Government or the relationship between the central authorities and the Special Administrative Region. That Region did not have full, sovereign powers (e.g. for the conduct of foreign affairs, defence, etc.) and the Standing Committee of the National People's Congress was empowered to make an authoritative interpretation in respect of circumscription of the Region's jurisdiction.

71. The courts in the Special Administrative Region were free to interpret the Basic Law in the adjudication of cases. Judgements rendered by such courts were not affected by subsequent interpretations of the Basic Law by the Standing Committee. In that sense, the system was not very different from the present one. In making its interpretations of the Basic Law, the Standing Committee was also obliged to consult an expert committee comprising six jurists from the Special Administrative Region and six from the rest of China.

72. Mr. LALLAH thanked the representative of the Hong Kong Government for the straightforward and clear answers given to questions by members of the Committee. One essential aspect of the undertakings made both by the United Kingdom and by China was that the Covenant should remain in force in Hong Kong now and in the future. To that end Hong Kong's Letters Patent had been amended in 1991, but the measure had dealt only with future legislation.

Large areas of past legislation that violated human rights had remained unaffected. He asked whether any steps were being contemplated to give full effect to the commitment on the part of both Governments to implementation of the Covenant in Hong Kong.

73. Concerning the education of the village communities, he asked whether any thought had been given to organizing seminars on evolving human rights standards, such as those for judges and jurists in many parts of the world.

74. Mr. KRETZMER thanked the United Kingdom and Hong Kong representatives for their very comprehensive replies. However, two questions remained unanswered: the United Kingdom's policy towards individuals or groups that might, because of earlier activities and positions, become vulnerable once the political transition had been achieved, and whether the Government intended to outlaw marital rape and its policy in the handling of domestic violence.

75. Mr. PRADO VALLEJO said that in answering his question on whether laws that would nullify the effect of the Covenant could be promulgated, the Hong Kong delegation had simply referred to article 39 of the Basic Law. It was precisely that text that caused him concern, especially the phrase "unless as prescribed by law", and he would appreciate elucidation of that point.

76. Ms. MEDINA QUIROGA welcomed the news that the Government had consulted the population in connection with its package of anti-discrimination laws, but wondered whether gays and lesbians had been asked about their views and about the extent of discrimination to which they felt they were subjected. She would also like to know why, for a woman who had been dismissed from her job, the remedy of reinstatement was contemplated in the Disability Ordinance, but not in the Sex Discrimination Ordinance, and why different amounts of compensation were accorded under the two Ordinances.

77. Mrs. CHANET said that in answering the question on the state of emergency provisions, the delegation had referred to article 39 of the Basic Law, which, it had said, must be read in conjunction with article 18. Article 39 was extremely general, however, while article 18 dealt with specific cases. She would welcome further information on how the respective provisions operated in the context of a state of emergency.

The meeting rose at 6.05 p.m.